



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

ADDRESS REPLY TO:
OFFICE OF THE ATTORNEY GENERAL
MINNESOTA POLLUTION CONTROL AGENCY
1935 W. COUNTY ROAD B2
ROSEVILLE, MINNESOTA 55113
(612) 296-7342

November 24, 1982

Edward J. Schwartzbauer
Dorsey and Whitney
2200 First Bank Place East
Minneapolis, MN 55402

Re: U.S. v. Reilly Tar and Chemical Corporation
File No. Civ. 4-80-469

Dear Ed:

This letter is written as a reply to your letter of November 10, 1982, in which you discuss the discovery issues raised in the course of your prior examination of Robert Lindall and Jack Van de North, specifically the identity of non-lawyer witnesses on Reilly Tar's claim of settlement.

In your letter of November 10, 1982, you refer to pages 95 through 99 of the Lindall deposition. At that point in your examination, you inquired as to the July 30, 1971 letter from Macomber to Reiersgord, specifically the final sentence in the letter which references the reinstatement of the lawsuit on the trial calendar. We continue to assert that communication between counsel for co-plaintiffs is generally privileged communication. We also recognize that some communication between co-counsel may not be privileged. For example, a joint statement by counsel could be made to a third party. Such a statement, intended for disclosure, would not be privileged. Therefore, we would have no objection to your inquiry as to statements which were made by Bob Lindall to Gary Macomber, with the expectation that Gary would convey the statement to Tom Reiersgord. Specifically, we would have no objection to a question as to whether Bob told Gary to make certain representations to Tom with regard to the reinstatement of the lawsuit on the trial calendar. If the answer is in the affirmative, we would have no objection to a follow-up question as to what Bob told Gary to represent to Tom, as well as no objection if you inquire as to whom Bob met with prior to speaking to Gary.

Your letter also refers to page 39 of the Van de North deposition. In response to your questions, Jack did identify non-lawyers involved with the Reilly Tar site, including George Koonce, Dale Wikre and Kyle Bishop. See pages 39 through 41 of the transcript. We have no objection to a follow-up question which inquires as to whom Jack met with, or spoke to, with regard to the Reilly Tar site.


We suggest the following procedure with regard to the further examination of Bob Lindall and Jack Van de North. We suggest that you draft questions for answer by Bob and by Jack. If the form of a question is objectionable to us, we will work with you to develop a question which is acceptable to both parties. We will then forward the questions to Bob and Jack for their reply, under oath. We could stipulate to this procedure pursuant to Rule 29 of the Federal Rules of Civil Procedure. We make this recommendation to proceed with written questions, with the expectation that this procedure will get you the information you desire, with a minimum of delay and cost, while protecting our clients' privileged communications with its counsel, as well as protecting the work product of counsel. We believe that your examination of Bob and Jack, with the issues of privileged communications and attorney work product pervading the examination, is best done by written questions.

Since you have raised the issue of representations made to Tom Reiersgord, we request that you also agree to allow us to provide you with questions for answer by Tom, under oath. That is, our agreement as to the procedure for examination of Bob and Jack would also apply to Tom, with regard to the purported settlement of the case.

In addition to the examination of Jack and Bob, we also have two other discovery issues outstanding with you. The first of these issues is the production of the witness kits. We have done additional legal research and believe that we are entitled to examine the witness kits made available by you to the witnesses whose depositions are taken. In this regard, will you make these witness kits available to us without the need to go before the Magistrate in an effort to compel their production? Second, we have raised the issue of the inadvertent production of privileged documents and our request for their return. We still believe that we are entitled to the return of the documents which were inadvertently produced in the course of the extensive production of documents to you. Please also advise us as to your position on this discovery issue.

We would like to continue to work amicably with you toward a practical and expeditious resolution of these discovery issues. Please advise if our proposed approach to the examination of Bob, Jack and Tom is acceptable, as well as to your position with regard to the production of the witness kits and the return of documents inadvertently produced.

Very truly yours,

A handwritten signature in black ink that reads "Dennis M. Coyne". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

DENNIS M. COYNE
Special Assistant
Attorney General

DMC/ps
cc: All counsel